IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE M.N.KRISHNAN

MONDAY, THE 2ND JULY 2007 / 11TH ASHADHA 1929

WP(C).No. 6417 of 2007(L)

O.P(EL).NO.4/2005 OF MUNSIFF COURT,VARKALA.

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PETITIONER:

LATHA RAJAN, W/O. SOMARAJAN,
`BINU VIHAR', NEDUNGANDA, VETTOOR VILLAGE,
THIRUVANANTHAPURAM DIST.

BY ADV. SRI.R.ANILKUMAR.

RESPONDENTS:

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1. **BEENARAJ, D/O. SOMARAJAN,**
   THIMMIKKAZHIKOM, VILA BHAGOM, VETTOOR.

2. **PRIYARAJ, D/O. MANIRAJ,**
   THODIYIL VEEDU, VETTOOR.

BY

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 02/07/2007,THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

W.P.(C). NO.6417/2007:

APPENDIX

PETITIONER'S EXHIBITS:

EXT.P.1: COPY OF THE ELECTION PETITION OP (E1) NO. 4/05 FILED BEFORE THE MUNSIFF'S COURT, VARKALA IS PRODUCED HEREWITH AND MARKED AS EXT.P.1. DTD. 26/10/05.

EXT.P.2: COPY OF THE DISMISSAL OF I.A. NO. 305/07 IN OP (EL) 4/05 PASSED BY THE MUNSIFF'S COURT, VARKALA, DTD. 14/02/2007.

RESPONDENT'S EXHIBITS: NIL.

//TRUE COPY//

prv.

M.N.KRISHNAN, J

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W.P.(C) No.6417 OF 2007

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Dated this the 2nd day of July, 2007

JUDGMENT

This writ petition is filed challenging the order in I.A.No.305 of 2007 in O.P.(E)No.4 of 2005. The application is one for amendment of the election petition. Even in the original petition, the petitioner has submitted that there has been double voting and she will be supplying the details in due course. Thereafter, after the commencement of the trial she has filed application for amendment of the petition incorporating the details which she has referred to in the O.P.(E). The learned Munsiff rejected the application on the ground that under Order VI Rule 17 pleadings have to be amended before the commencement of the trial and he further held that it is not a case where in spite of due diligence she was not able to furnish the materials. It is a settled principle of law that amendment of pleadings have to be liberally allowed so that the party is not put into peril on account of the same. It is not a new case designed by the petitioner to defeat the respondent in the case. Even at the inception she has pointed out the double voting and the incapacity at that point of time to mention about the

details. Learned counsel for the petitioner submits that as and when she was able to obtain particulars she has moved application for amendment and it should not have been dismissed by the court below.

2. It is not a new case and what is sought to be supplied is the particulars necessary for resolving the issue between the parties. Double voting is a ground which is sufficient to set aside an election if it is established. Therefore I feel that there are reasonable grounds for the delay and it is not a supply of new materials and so the court below should have liberally approached the matter and should have allowed the application. Before this court the respondent had not even chosen to enter appearance. From the materials available, I find that this is a case where the petition is to be allowed. Therefore the order under challenge is set aside and the amendment application is allowed. The court below is directed to instruct the petitioner to amend the plaint and to carry out the amendment in accordance with law.

Writ petition is disposed of as above.

M.N.KRISHNAN, JUDGE

Cdp/-